

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

Jojo Borromeo Santa Mina, M.D. aka)

Reynaldo Borromeo Santa Mina, M.D.)

Physician's and Surgeon's)

Certificate No. A 67778)

Petitioner.)

Case No. 10-2007-184576

**DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION**

No action having been taken on the petition for reconsideration, filed by Michael J. McCabe, Esq., and the time for action having expired at 5 p.m. on May 6, 2011, the petition is deemed denied by operation of law.

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

MBC No. 10-2007-184576

Jojo Borromeo Santa Mina, M.D.)

Aka Reynaldo Boromeo Santa Mina, M.D.)

Physician's & Surgeon's)

Certificate No. A 67778)

Respondent)

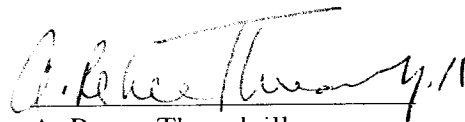
ORDER GRANTING STAY

Michael J. McCabe on behalf of respondent, Jojo Borromeo Santa Mina, M.D. aka Reynaldo Boromeo Santa Mina, M.D., has filed a request for stay of execution of the Decision in this matter with an effective date of April 8, 2011.

Execution is stayed until **May 6, 2011**.

This stay is granted for the purpose of allowing the Respondent to file the Petition for Reconsideration and the Board time to review and consider the Petition for Reconsideration.

DATED: March 28, 2011



A. Renee Threadgill
Chief of Enforcement
Medical Board of California

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)
Against:)

Jojo Borrromeo Santa Mina, M.D. aka)
Reynaldo Borrromeo Santa Mina, M.D.)

Case No. 10-2007-184576

Physician's and Surgeon's)
Certificate No. A 67778)

Respondent)

_____)

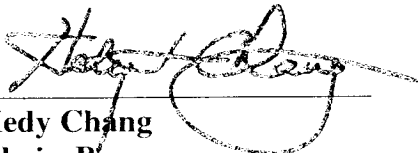
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 8, 2011.

IT IS SO ORDERED March 11, 2011.

MEDICAL BOARD OF CALIFORNIA

By: 
Hedy Chang
Chair, B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOJO BORROMEIO SANTA MINA, M.D., aka
REYNALDO BORROMEIO SANTA MINA, M.D.,

Physician's and Surgeon's Certificate No. A67778,

Respondent.

Case No. 10-2007-184576

OAH No. 2010080506

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 10-13, 2011, in San Diego, California.

Michael S. Cochrane, Deputy Attorney General, Department of Justice, State of California, represented Complainant, Linda K. Whitney, Executive Director of the Medical Board of California, Department of Consumer Affairs, State of California.

Michael J. McCabe, Attorney at Law, and Baharch Ansari, Attorney at Law, represented respondent, Jojo Borromeo Santa Mina, M.D., who was present throughout the disciplinary proceeding.

On January 13, 2010, the matter was submitted.

PRELIMINARY STATEMENT

The Medical Board of California issued Physician's and Surgeon's Certificate No. A67778 to Jojo Borromeo Santa Mina, M.D., on March 12, 1999. Dr. Santa Mina, a neurologist, has practiced medicine in California since then. There is no history of any prior discipline having been imposed against Dr. Santa Mina's certificate.

On May 31, 2007, Dr. Santa Mina met with patient ER at Dr. Santa Mina's medical clinic in Brawley. Dr. Santa Mina conducted a neurological examination of ER's lower extremities to assess ER's complaint of radiating low back pain. As a result of that neurological examination, Dr. Santa Mina ordered additional diagnostic testing.

On June 1, 2007, during the course of electromyogram and nerve conduction studies, Dr. Santa Mina fellated ER, who was stunned by Dr. Santa Mina's sexual misconduct. Several days later, ER contacted the Brawley Police Department. An officer with the Brawley Police Department outfitted ER with a recording device, directed ER to meet with Dr. Santa Mina, and suggested that ER accuse Dr. Santa Mina of sexual misconduct. The plan was to memorialize any admissions Dr. Mina might make for later use in a criminal proceeding. ER and Dr. Santa Mina met at the medical clinic in the late afternoon of June 8, 2007. Their conversation was surreptitiously recorded. Complainant argued that Dr. Santa Mina essentially admitted to ER that he had engaged sexual misconduct. Dr. Santa Mina asserted that the conversation demonstrated no more than a professional concern for his patient.

On June 14, 2007, a criminal complaint was filed in the Superior Court of California, Imperial County, charging Dr. Santa Mina with forcible oral copulation, sexual battery, and the sexual exploitation of a patient. The Medical Board received notice of Dr. Santa Mina's arrest on those charges on June 21, 2007.

On August 22, 2008, following an 11-day jury trial that spanned approximately three weeks, Dr. Santa Mina was acquitted of all criminal charges.

On June 17, 2010, Complainant signed and filed the Accusation in this disciplinary matter.

Dr. Santa Mina defended the charges in this disciplinary action on several grounds. First, he asserted that his acquittal in the criminal action precluded the prosecution of this disciplinary action. Second, Dr. Santa Mina contended that this disciplinary action was barred by the statute of limitations. Third, he claimed that the inordinate delay in filing and prosecuting this disciplinary action required its dismissal. Finally, Dr. Santa Mina asserted that he did not engage in any misconduct in his care and treatment of ER and that ER's allegations were fabricated and without merit.

For the reasons stated hereafter, it is concluded that the doctrine of collateral estoppel does not apply, that the Accusation was filed in a timely fashion, and that no prejudice resulted from any delay in the filing and prosecution of this disciplinary action. The clear and convincing evidence established that Dr. Santa Mina engaged in sexual misconduct with ER. Abundant evidence, including Dr. Santa Mina's admissions in the conversation, corroborated ER's account that Dr. Santa Mina engaged in sexual misconduct and sexually exploited ER on June 1, 2007.

The outright revocation of Dr. Santa Mina's license is the only measure of discipline that will protect the public.

FACTUAL FINDINGS

The Accusation

1. On June 17, 2010, Complainant, Linda K. Whitney, Executive Director. Medical Board of California, Department of Consumer Affairs, State of California, signed and filed the accusation (Case No. 10-2007-184576). The accusation was amended several times during the administrative hearing. The accusation, as amended, alleged that Dr. Santa Mina committed an act of sexual abuse with patient ER on June 1, 2007 (first cause for discipline) and that such misconduct involved gross negligence (second cause for discipline) and repeated negligent acts (third cause for discipline).

The accusation was served on Dr. Santa Mina, who timely filed a notice of defense. The matter was set for a disciplinary hearing.

On January 10, 2011, the record in this disciplinary proceeding was opened; official notice was taken; respondent's motions to dismiss were considered; and opening statements were given. On January 10-13, 2011, sworn testimony was received and documentary evidence was introduced. On January 13, 2011, closing arguments were given; the record was closed; and the matter was submitted.

Respondent's Motions to Dismiss

2. Collateral Estoppel: On June 14, 2007, a felony complaint was filed in the Superior Court of California, County of Imperial, charging Dr. Santa Mina with forcible oral copulation, sexual battery, and the sexual exploitation of a patient. On August 22, 2008, following an 11-day jury trial, Dr. Santa Mina was acquitted of all charges. Based on these undisputed facts, respondent moved to dismiss the disciplinary charges, asserting that the doctrine of collateral estoppel precluded the Medical Board from relitigating the issues that were litigated and necessarily decided in the criminal proceeding. Respondent claimed that the "proof beyond a reasonable doubt" standard required in the criminal action was identical to the "clear and convincing evidence" standard that applies in this disciplinary action.

Complainant asserted that the doctrine of collateral estoppel did not apply because the "clear and convincing evidence" standard was not the same and was less than the "proof beyond a reasonable doubt" standard.

In general, collateral estoppel precludes a party from relitigating issues litigated and decided in a prior proceeding. Traditionally, courts apply the doctrine only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in

privity with, the party to the former proceeding. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 848-849.)

When an administrative agency acts in a judicial capacity and resolves disputed factual issues after the parties have had an adequate opportunity to litigate, the administrative agency's decision may have a collateral estoppel effect and preclude a subsequent criminal action. (*Gray v. Superior Court* (2005) 125 Cal.App.4th 629, 639.) The reverse is not true, however. In a criminal case, the burden of proof is higher than it is in an administrative proceeding and, consequently, the issue decided in the criminal proceeding is not identical to the one to be litigated in a subsequent administrative hearing. (*Holt v. Department of Food & Agriculture* (1985) 171 Cal.App.3d 427, 433.)

Evidence Code section 115 defines "burden of proof" to mean a party's obligation to establish a requisite degree of belief. Evidence Code section 115 specifically sets forth several standards: "The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt."

The standard of proof in Dr. Santa Mina's criminal proceeding was "proof beyond a reasonable doubt." The standard of proof in this administrative proceeding is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855.)

In *In re Manuel L.* (1994) 7 Cal.4th 229, 233-234, the California Supreme Court observed that proof beyond a reasonable doubt is a more rigorous standard than clear and convincing evidence. And, in *People v. Jason K.* (2010) 188 Cal.App.4th 1545, 1556, the appellate court noted:

When the preponderance of the evidence standard of proof is used, the risk of an erroneous deprivation of the interest is shared "in roughly equal fashion" between the parties. [Citation.] The beyond a reasonable doubt standard is "designed to exclude as nearly as possible the likelihood of an erroneous judgment" and "imposes almost the entire risk of error upon [the government]." [Citation.] The clear and convincing evidence standard represents an intermediate standard that "reduce[s] the risk to the [individual] ... by increasing the [government's] burden of proof." [Citation.]

The doctrine of collateral estoppel does not apply in this administrative disciplinary proceeding.

3. Statute of Limitations: On June 14, 2007, the Imperial County District Attorney filed the felony complaint in the Superior Court. The Office of the Attorney General appeared in that criminal action on July 11, 2007. The accusation in this matter was filed on June 17, 2010. Respondent argued that the Imperial County District Attorney had the duty to notify the Medical Board of the filing of the criminal action and concluded that the Medical Board received notice of the criminal filing on June 14, 2007, as a result of the presumption set forth in Evidence Code section 664. On this basis, respondent asserted that the accusation – which was not filed until June 17, 2010 – was filed more than three years after the Medical Board received notice of Dr. Santa Mina’s alleged misconduct.

Business and Professions Code section 2203.5, subdivision (a), requires (with certain exceptions that do not apply here) that “any accusation filed against a licensee . . . shall be filed within three years after the board . . . discovers the act or omission alleged as the ground for disciplinary action. . . .”

Marybeth Rodriguez, a Medical Board investigator, established that the Medical Board first received notice of the criminal charges filed against Dr. Santa Mina from a fax from the Brawley Police Department that the Medical Board received on June 21, 2007. The Imperial County District Attorney’s Office did not forward a copy of the criminal complaint to the Office of the Attorney General until July 5, 2007.

The Medical Board discovered the acts alleged as the ground for the disciplinary action on June 21, 2007. The accusation was filed on June 17, 2010, within three years of the Medical Board’s discovery of those acts. Thus, accusation was filed within the period of limitation set forth in Business and Professions Code section 2203.5, subdivision (a).

4. Laches: Respondent asserted that Complainant’s inordinate delay in filing and prosecuting this administrative action required its dismissal. Respondent cited *Barker v. Wingo* (1972) 407 U.S. 514, and urged that the balancing test set forth in that decision be applied in this matter. Dr. Santa Mina argued, “Because the alleged incidents on which the Accusation is based occurred almost three and one-half years ago, there will likely be evidentiary problems related to the memory of the witnesses.”

Complainant argued that respondent had the burden of establishing “substantial prejudice” from any unreasonable delay, citing *Lam v. Bureau of Security and Investigative Services* (1995) 34 Cal.App.4th 29, 36, and *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 815.

The mere lapse of time is neither a denial of due process nor a jurisdictional defect in an administrative disciplinary proceeding absent a showing of specific prejudice. (*Ramirez v. State Bar* (1980) 28 Cal.3d 402, 412.) Laches is an equitable defense that requires both an unreasonable delay and prejudice resulting from the delay. The party seeking to benefit from the laches defense bears the burden of proof on these issues. It is not enough to find that a

delay was unreasonable. There must also be substantial evidence of prejudice resulting from the delay. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 815.)

Many witnesses testified during this hearing, including ER, his wife, medical clinic staff members, and Dr. Santa Mina. No witness asserted a complete failure of recollection as a result of the passage of time. Dr. Santa Mina, whose testimony was key to his defense, testified in great detail about what he recalled and what he claimed occurred. Transcripts from the criminal proceeding were available to help refresh witness' recollection. The June 1, 2007, conversation between ER and Dr. Santa Mina was recorded on that date, and the recording was played for ER and Dr. Santa Mina, who commented on it at length.

Any delay in filing the Accusation did not result in substantial prejudice to Dr. Santa Mina. The defense of laches does not apply.

Dr. Santa Mina's Background, Education, Training, and Experience

5. Dr. Santa Mina is 42 years old. His birth name was Reynaldo Borromeo Santa Mina, but he was always known by his nickname, Jojo, so he formally changed his name to Jojo Borromeo Santa Mina in September 2009.

Dr. Santa Mina grew up in Manila, Philippines, in a close knit, middle class family. Tagalog is his first language. Dr. Santa Mina is fluent in English. He understands some Spanish, but his ability to speak and write Spanish is limited.

Dr. Santa Mina received a bachelor's degree in Zoology from the University of the Philippines in April 1989. He attended medical school at the University of the East, Philippines, from 1989-1994. He received a medical degree in 1994. Dr. Santa Mina's parents and several sisters immigrated to the United States while Dr. Santa Mina was attending medical school.

Dr. Santa Mina came to the United States in 1995. He was accepted into an internship program at the Los Angeles County-USC Medical Center, where he completed an internship in 1997. In 1997, Dr. Santa Mina began a Neurology residency at the University of California, Davis, School of Medicine. When that program was discontinued, Dr. Santa Mina transferred to the University of California, Irvine, School of Medicine, where he completed his Neurology residency in 2001. Dr. Santa Mina trained under Tahseen Mozaffar, M.D., while in his residency with the University of California, Irvine.

Following his residency, Dr. Santa Mina accepted a position with the McHenry Medical Group in Modesto. He practiced in Modesto from 2001 through 2004. He served as a consultant at the Memorial Medical Center and the Doctors Medical Center while working in Modesto.

In 2004, Pioneers Memorial Hospital in Brawley encouraged Dr. Santa Mina to open a practice in Brawley, where there was a shortage of neurologists who accepted Medi-Cal patients. Dr. Santa Mina moved to Brawley, where he practiced from 2004 through 2009.

In 2009, Dr. Santa Mina moved to the Bay Area to be closer to his family. He entered a fellowship at the University of California, San Francisco, School of Medicine to study at the headache clinic. According to Dr. Santa Mina, UCSF found his training, experience, and skill level sufficiently advanced that UCSF appointed him as an assistant clinical professor.

Dr. Santa Mina remained in the Bay Area until November 2009, when he was recruited by Peter Kim, M.D., a classmate from the University of California, Irvine, School of Medicine, to join Dr. Kim's neurology practice in Simi Valley. Dr. Santa Mina moved to Simi Valley and has practiced in Simi Valley since then. He holds staff privileges at Simi Valley Hospital.

Dr. Santa Mina is board qualified in Neurology, but he is not board certified. There is no history of any discipline having been imposed against his license.

Patient ER

6. ER is a 35-year-old Hispanic male whose primary language is Spanish. He understands and speaks some English, but he required an interpreter to testify in this disciplinary proceeding.

ER has been married to SR for 13 years. They have three children, ages 11, seven and four years of age. ER is a construction worker who is on disability as a result of a low back injury. ER testified that he is heterosexual.

7. In 2007, ER was seen by several physicians in the Imperial Valley for complaints of radiating low back pain, including John Parsons, M.D., an internist, Mohammad Berenji, M.D., a nephrologist, and James Roach, M.D., a urologist.

ER provided a history to Dr. Roach during an April 4, 2007, office visit. Dr. Parsons described that history in a letter Dr. Berenji dated April 24, 2007. According to the letter, ER reported a strong stream, but mentioned got up two to three times a night to urinate, experienced occasional urgency, but had no other symptoms. ER provided a history of flank pain and pain radiating into the back, more on the right side than on the left, extending down the lower extremity. Dr. Roach's letter stated he reviewed a CT scan of the abdomen, without contrast, that was somewhat abnormal.

In a letter to Dr. Berenji dated May 7, 2007, Dr. Parsons stated that ER voided with a strong stream and got up once or twice a night to void. No other urinary symptoms were mentioned. Dr. Parsons stated that ER was tender, mainly over the paraspinal muscles, and demonstrated a positive straight leg raising test with elevation of the left leg, which could be

extended only to 60 degrees without pain. Dr. Parsons believed ER's low back complaints were related to neurological problems and not to kidney problems.

Dr. Roach's letters to Dr. Berenji and his chart note prepared in connection with the April 4, 2007, office visit did not mention complaints of erectile dysfunction, minor difficulties with erection, urinary hesitation, or incontinence.

Dr. Roach referred ER to Dr. Santa Mina for a neurological evaluation.

Dr. Santa Mina's Interaction with ER

The May 31, 2007, Visit

8. Dr. Santa Mina first saw ER on May 31, 2007. Before Dr. Santa Mina met with ER, his medical assistant, Diana Del Campo, obtained ER's chief complaint of "back pain" and obtained ER's vital signs. Ms. Del Campo served as an interpreter during the history taking portion of the examination that followed.

Dr. Santa Mina's examination included a patient history and a neurological examination of ER's lower extremities. Dr. Santa Mina prepared a handwritten chart note for that visit. Dr. Santa Mina's handwritten chart note stated that ER was a 32-year-old, right-handed, Hispanic male with a chief complaint of progressive back pain that began around 2005. ER reported numbness, paresthesia, leg weakness, and problems with balance when his legs gave out. ER reported taking Ibuprofen for pain. Dr. Santa Mina testified that his handwritten notes prepared during the history portion of the patient chart documented ER's complaints of urinary hesitancy, incontinence, and erectile dysfunction. Dr. Santa Mina testified that he did not ask ER about his sexual history. Dr. Santa Mina's undated letter to Dr. Roach concerning the May 31 office visit mentioned ER's "minor difficulty with erection and some urinary hesitation," but it did not mention incontinence.

9. ER testified that no interpreter was present during any portion of the May 31 examination, that he had no problem attaining and maintaining an erection at that or any other time, and that Dr. Santa Mina asked him numerous questions about his sexual life, including visits with prostitutes, whether he had sex with women he met in bars, and whether he ever contracted any sexually transmitted diseases, all of which ER said he denied.

ER's testimony differed from Ms. Del Campo's testimony to the extent that Ms. Del Campo recalled that ER mentioned that he had some type of difficulty with sexual activity. But, Ms. Del Campo did not testify that ER said that he suffered from erectile dysfunction, and she was not aware of any discussion about ER's sexual history.

10. Dr. Santa Mina conducted a neurological examination of the lower extremities. Ms. Del Campo was not present during that examination. ER wore underpants and a gown during the neurological examination. Dr. Santa Mina's examination included muscle and

sensory testing of the lower extremities, checking deep tendon reflexes, the Babinski response, and observing ER's balance and gait. Dr. Santa Mina found paraspinal muscle spasm in the right lumbar area by palpating the musculature there. When using a Wartenberg pinwheel,¹ Dr. Santa Mina found decreased sensation at the L4 and L5 dermatomal areas on the left, and hyperesthesia at the L2 and L3 dermatomal areas on the left. The chart notes contained no mention of reflexes or balance or gait.

Dr. Santa Mina believed, following the May 31, 2007, examination, that ER's symptomatology and the physical findings were probably related to lumbosacral radioclopathy, secondary to lumbar spine degeneration.

Dr. Santa Mina concluded that further diagnostic testing should be undertaken including an electromyogram (EMG) and nerve conduction studies (which Dr. Santa Mina proposed to perform at his clinic) and an MRI (which ER was to obtain from the El Centro Regional Medical Center).

Arrangements were made for ER to undergo electromyogram and nerve conduction studies at Dr. Santa Mina's office in about two weeks and for ER to obtain an MRI at the hospital in the interim.

The Friday, June 1, 2007, Visit

11. ER was not scheduled to see Dr. Santa Mina on June 1. However, Dr. Santa Mina became available to see patients Friday afternoon, June 1, due to several cancellations. Dr. Santa Mina directed office staff to contact patients who were scheduled to undergo electrodiagnostic testing at his clinic in the future and determine if any of those patients were free to come in for testing that afternoon.

Ms. Del Campo telephoned three patients, one of whom was ER. ER was able to come into the clinic for electrodiagnostic testing. Arrangements were made for ER to see Dr. Santa Mina at the clinic that afternoon. Ms. Del Campo left the office before ER arrived.

ER arrived at the clinic late in the afternoon of June 1. Another staff member, Victoria Escalante, was present when ER arrived, but it was Ms. Escalante's last day at work, and she was busy in her office completing paperwork.

¹ A neurologist uses a Wartenberg pinwheel to test a patient's nerve reaction as the medical device is rolled across the patient's skin. The device is approximately six inches long, is made of stainless steel, and has a rotating stainless steel spur affixed to the top of the device's handle. The spur, which has evenly spaced radiating pins, rotates around as it is rolled. The patient advises the neurologist about the changes in sensation the patient experiences, if any, as the pinwheel moves over the skin.

When ER arrived, the door to the office was locked. He knocked on the door. Dr. Santa Mina answered, unlocked the door, and escorted ER to the room where he conducted electrodiagnostic testing. Dr. Santa Mina told ER to go into the room and remove his clothing. ER received a gown which he used to drape his genital area. Dr. Santa Mina then entered the room.

In order to improve conductivity and prevent infection,² Dr. Santa Mina cleaned ER's lower extremities with isopropyl alcohol.

ER's Testimony

12. According to ER, there was constant cleaning of the area below his waist, including his testicles and penis. ER was apprehensive about the procedures that were proposed. Towards the end of the last procedure, ER recalled that Dr. Santa Mina told ER to relax, to close his eyes, and to lie with his back on the examination table. ER did so, and he said he then felt a pulling sensation on his penis. He looked down and saw Dr. Santa Mina sucking his penis. ER pulled away and said, "What's going on?" Dr. Santa Mina replied, "Don't worry, it's fine." ER was stunned and did not know what to do. Dr. Santa Mina told ER that the examination was over and to put his clothes back on.

13. ER left the clinic. As he was leaving, Dr. Santa Mina invited ER to Dr. Santa Mina's home. He told ER to follow him in his car. ER got into his car and followed Dr. Santa Mina's car for a couple of blocks and then "left when there was a chance." ER drove home. When ER arrived home, ER's wife was on the phone. She put her hand over the phone and mouthed, "It's Dr. Santa Mina." ER told his wife to tell Dr. Santa Mina that he had not returned home.

² Notice is taken that a nerve conduction study evaluates the function and electrical conduction of nerves that are being tested. Motor nerve conduction studies are performed by electrically stimulating a peripheral nerve and recording the time it takes for the electrical impulse to travel from the point of stimulation to an end point. The size of the response - called the amplitude - is also measured. By stimulating two or more locations along the same nerve, nerve conduction velocity is determined. Calculations are then made to determine if pathology exists. A nerve conduction study is not invasive, but it can be unpleasant to many patients due to the electrical shocks that are administered.

To perform intramuscular electromyogram, a needle electrode is inserted into the muscle tissue at several locations. The neurologist observes the electrical activity while inserting the electrode. Normal muscles at rest make certain, normal electrical signals when a needle is inserted. Abnormal spontaneous activity might indicate some nerve and/or muscle damage. The electrode is retracted and is inserted again at a different site, and the activity is analyzed. Each electrode track gives a very local picture of the activity of the whole muscle. Some patients find the procedure painful.

Dr. Santa Mina's Testimony

14. Dr. Santa Mina testified that ER came to his office around 5:00 p.m. on June 1, 2007, that he opened the door, that he greeted ER, that he led ER through the clinic to the examination room, that he explained what was going to happen, that he gave ER a gown, and that he left ER alone in the exam room for a few moments to permit ER to get undressed.

Dr. Santa Mina testified that ER appeared very nervous when Dr. Santa Mina returned to the exam room. Dr. Santa Mina testified that he swabbed ER's lower extremities, with isopropyl alcohol to prepare for the nerve conduction studies. Dr. Santa Minas testified that he swabbed areas within one to three inches of ER's testicles and penis, but he did not touch and did not clean those areas.

Dr. Santa Mina testified that when he swabbed ER's inner thigh area, he observed movement in the paper gown that covered ER's genital area. Dr. Santa Mina testified that he believed ER was having an erection, so he excused himself, left the exam room, and went to his office where he remained for several minutes. Dr. Santa Mina testified that after he returned to the exam room, he resumed swabbing ER's inner thigh and, once again, observed movement in the paper gown that covered ER's genital area. Dr. Santa Mina testified that he left the exam room again. When Dr. Santa Mina returned from his office to the exam room, he swabbed ER's inner thigh area again. Dr. Santa Mina testified that on this occasion he observed that the gown covering ER's genital area was wet, which caused him to conclude that ER had ejaculated. Dr. Santa Mina then proceeded with the nerve conduction studies, which took about 15 minutes. Following the nerve conduction studies, Dr. Santa Mina said he reapplied alcohol to ER's lower extremities – again not touching or cleaning the penis or testicles – after which he conducted electromyography. Dr. Santa Mina testified that ER looked away and appeared to be in discomfort.

Following the diagnostic procedures, Dr. Santa Mina told ER that there were some abnormalities on testing and that he suspected a bulging disc. Dr. Santa Mina said he mentioned to ER that he had observed ER's erection, and that he was surprised since ER had complained of erectile dysfunction. According to Dr. Santa Mina, ER responded by shrugging his shoulders and smiling.

Dr. Santa Mina denied inviting ER to follow him to his home. He testified that he observed ER leave the clinic, that he was concerned about ER, that he asked Ms. Escalante for ER's telephone number, and that he called ER's home twice to make certain that ER was comfortable and that the testing had not caused him any problems. Dr. Santa Mina testified that he spoke with ER's wife during the first conversation, that a child in the home served as an interpreter, that the call was disconnected, and that he called back a few moments later and asked ER's wife to have ER give him a phone call. Dr. Santa Mina said he did not make a third phone call.

Dr. Santa Mina testified that he is heterosexual, that he has no sexual interest in males, and that he did not fellate ER.

Dr. Santa Mina's Records of the June 1, 2007, Visit

15. Dr. Santa Mina's patient chart contained the results of the nerve conduction studies, the electromyography, and the following impression: "This electrodiagnostic study is slightly abnormal, with mild acute denervation of the left gastrocnemius (S1, S2) muscle. Such finding could suggest of [sic] mild acute S1 radioclopathy. Clinical and radiographic correlation is recommended."

The handwritten chart note for that visit stated: "Patient appeared very anxious during testing! Afterwards he was in a hurry to leave."

Dr. Santa Mina testified that the fact that ER was in a hurry to leave was not medically significant, but ER's having ejaculated during the procedure, particularly after claiming erectile dysfunction, was a medically significant event.

16. Dr. Santa Mina testified that he had not seen or heard of a patient ejaculating during electrodiagnostic testing before ER did so. He conceded that ejaculation was a highly significant event. Dr. Santa Mina testified he did not document that ER had ejaculated during the office visit because that might be embarrassing to the patient.

Victoria Escalante's Testimony

17. Ms. Escalante never saw ER the afternoon of June 1, 2007, but she observed the door to the room where electrodiagnostic testing was conducted was open. She heard male voices. She saw ER leave the clinic. He did not appear to be in distress.

Ms. Escalante served as an interpreter for Dr. Santa Mina before June 1, 2007, but she did not serve as an interpreter for Dr. Santa Mina and ER the afternoon of June 1.

Ms. Escalante recalled that Dr. Santa Mina left the clinic almost immediately after ER.

SR.'s Testimony

18. SR is married to ER and has been ER's partner since 1997. According to SR, ER does not have problems with erectile dysfunction.

SR spoke with Dr. Santa Mina three times late in the afternoon of June 1, 2007. A man called her home and asked to speak with ER. SR said ER was at the doctor's office. The person calling identified himself as Dr. Santa Mina. A few moments later, Dr. Santa Mina called again and asked to speak with ER. Once again, SR said ER was not at home.

She gave the telephone to her son, who speaks English. The phone call ended. A few minutes later, the phone rang a third time. ER was coming inside the home at about that time. SR answered the phone and mouthed, "It's the doctor," so that Dr. Santa Mina could not hear. ER quietly told SR to tell Dr. Mina that he was not home. SR did so, and the phone call ended.

ER's Contact with the Brawley Police Department

19. After arriving home the evening of June 1, 2007, ER told his wife that Dr. Santa Mina had sucked his penis. That weekend, ER discussed the matter with Fileman G., a neighbor and friend. Several days later, ER reported the June 1 incident to Detective Felix Salazar of the Brawley Police Department.

Detective Salazar told ER that more proof was needed to prosecute Dr. Santa Mina. He suggested that ER be outfitted with a covert transmitter, that ER confront Dr. Santa Mina, that ER attempt to have Dr. Santa Mina confirm what ER claimed had taken place during the June 1, 2007, office visit, and that ER's conversation with Dr. Santa Mina be recorded. ER agreed to the plan.

On June 7, 2007, ER met with Dr. Santa Mina at Dr. Santa Mina's clinic at around 5:00 p.m. ER was equipped with a transmitter. Detective Salazar had cautioned ER not to enter Dr. Santa Mina's office. ER met Dr. Santa Mina and claimed he was there to deliver the MRI studies. ER had a conversation with Dr. Santa Mina, but the transmitter was not working and ER's June 7, 2007, conversation with Dr. Santa Mina's was not recorded.

On June 8, 2007, ER returned to Dr. Santa Mina's clinic at around 5:00 p.m. He was, again, outfitted with a transmitter. This time the transmitter worked. The pretext for this visit involved ER wanting to know the results of the MRI studies. When ER arrived, the clinic was closed. ER knocked on the door. Dr. Santa Mina answered. No one other than Dr. Santa Mina was present in the clinic.

ER and Dr. Santa Mina had a conversation in the doorway for the next 20 minutes. Their conversation was recorded. Much of the recording was garbled and many parts were simply unintelligible. The conversation was mostly in Spanish. A transcript of the intelligible portions of conversation was provided.

The June 8, 2007, Recorded Conversation

20. Dr. Santa Mina asked ER to come inside the clinic. ER said he could not go in. ER said he was nervous. Dr. Santa Mina told ER, "Come here." ER again told Dr. Santa Mina he could not do so, that he was nervous. Dr. Santa Mina said, "Please." ER declined. Dr. Santa Mina asked if ER needed medication. ER said, "No, I'm scared because of Friday."

Dr. Santa Mina said he had the placas [x-rays] for ER and invited ER inside to see them. ER said he was going to go home. Dr. Santa Mina said, "Okay, if you don't want to come in [unintelligible] . . . because people will see you and you think we're open . . . but we're closed." ER said, "No, I can't be in here."

ER motioned towards a medical device in Dr. Santa Mina's lab coat pocket and said, "[unintelligible] on my dick," to which Dr. Santa Mina said, "It worked for you." ER said, "I was nervous." Moments later, ER said, "I'm nervous . . . because of what happened on Friday." This comment was repeated. Dr. Santa Mina's response to ER's statement was unintelligible.

Dr. Santa Mina offered to show ER something. In response, ER asked "Here?," meaning in the doorway where he was standing. Dr. Santa Mina responded, "No, over here," meaning inside the clinic. He said, "Come here, and I'll let you read this." ER said he would not go inside because he was nervous because "of what happened the other time."

According to ER, Dr. Santa Mina then presented him with a printed, unsigned letter of apology. ER testified that the letter was written in Spanish. ER read the letter aloud so its contents would be transmitted and recorded. ER read the following letter from Dr. Santa Mina:

. . . First, let me apologize because of what happened last week . . I still can't understand what I did . . I am a good person . . . and I don't attempt to mistreat anyone . . . I am the doctor and my job is to help the people who are sick and not hurt them . . . Normally, I have never done very stupid things in my work and I have . . . and that is why I want my patients to respect me . . . and that is what I do . . . I lost . . . that is why I lost control and that . . . and that is why I did what I did . . . it was not my intention to cause you anxiety . . . I know you are married and you have your children, your wife, but I liked you . . . please do not be afraid of me, nervous or anxious . . . [sigh] [pause] I don't bite like an animal . . . I want you to treat me as a friend, a best friend, and I shall do the same . . . you can call me if you have any problem and because of that, I can communicate with you if you have a problem . . . thank you very much for trying to understand me and I hope I can trust you.

According to ER, Dr. Santa Mina took the letter back after ER read it aloud. ER did not maintain possession of the letter.

The conversation continued. ER asked about the MRI results. ER told Dr. Santa Mina, "Just give me the results and then I'm leaving." Dr. Santa Mina said, "I know, I will show it to you. Come here . . . I can't show it to you over there." ER then said in English, "I go to my house," to which Dr. Santa Mina responded, also in English, "I will go to your house?" ER said, "No," and then laughed. ER then said, "Just give me the papers and I'm leaving . . . the papers . . . going to my house."

Dr. Santa Mina said something about there being many problems with the disc in ER's low back and that the nerve was affected. ER said he would come back to the clinic Tuesday morning. Dr. Santa Mina asked ER to come into the clinic, and ER said, "No." Dr. Santa Mina said, "Please," and ER replied, "I am nervous because of what happened on Friday . . . I am nervous." Then, in English, ER said, "You suck my dick." Dr. Santa Mina replied, "No, I know, but . . ."

There was more conversation, and then ER said he would return to the clinic on Tuesday morning, after which Dr. Santa Mina said, "Please . . . don't leave." ER said his wife was at home waiting. Dr. Santa Mina said he would help ER and ". . . if you need money . . . Do you need money for your family?" ER said, "No, not now."

ER again said he was going home, and Dr. Santa Mina said, "I already showed it to you . . . Yes, do not be afraid of me . . . [neither] nervous nor anxious . . . I don't bite like an animal." ER responded by saying, "No, but . . . but you suck my dick . . . I'm nervous . . ."

There was a pause in the conversation. Then Dr. Santa Mina asked, "Did you tell your wife?" When ER said he had not told his wife, Dr. Santa Mina said, "She's gonna' get mad," after which there was laughter.

ER again said he was going home, after which Dr. Santa Mina said, "No anxiety . . . no nothing . . . please . . . have a seat . . . we'll watch TV." ER said, "No."

After ER took a phone call that ER said was from his wife (it was actually from Detective Salazar, who was monitoring the conversation from a vehicle nearby). ER said he was going home. Dr. Santa Mina said he would see ER on Tuesday.

Dr. Santa Mina's Testimony Concerning the Recording

21. Dr. Santa Mina provided dubious testimony about the interaction and sought to explain damaging portions of the recorded conversation.

Dr. Santa Mina testified that he was surprised that ER arrived at the clinic on June 8, 2007. According to Dr. Santa Mina, he told ER that the MRI showed a bulging disc and he invited ER into the clinic for the purpose of looking at the MRI images. Dr. Santa Mina said ER looked nervous.

Dr. Santa Mina testified that when ER made references to “Friday,” he assumed that ER was referring to ER having had an erection and having ejaculated during the June 1, 2007, visit. Dr. Santa Mina testified he never heard ER say, “You suck my dick,” and that his comment, “No, I know . . .” following that statement was not in response to it.

Dr. Santa Mina testified that he did not provide ER with a written letter of apology. Dr. Santa Mina testified that he gave ER a handwritten document which Dr. Santa Mina impulsively prepared on the back of a requisition form that said, in Spanish, “Don’t be anxious. Don’t be nervous. I am not an animal. I am not a dog.” Dr. Santa Mina said that this language was drawn from a nursery rhyme that he used to recite with other children in the Philippines, a rhyme that was chanted or sung to the tune of London Bridge Is Falling Down. Dr. Santa Mina hypothesized that ER brought a typewritten letter of apology with him on June 8, that ER read that document when Dr. Santa Mina was out of ER’s presence, and that ER included in his reading of that letter a portion of the nursery rhyme that Dr. Santa Mina had just produced. Dr. Santa Mina testified he was incapable of drafting a letter in Spanish that was as grammatically correct as the letter ER purported to read. He asserted that if he had really written such a letter, ER would have maintained possession of it and would not have permitted Dr. Santa Mina to take it back.

Dr. Santa Mina testified that his question, “Did you tell your wife?” referred to ER’s ejaculation the Friday before, and that the question was not in response to ER’s allegation “You suck my dick” because he never heard that allegation.

Dr. Santa Mina testified that he did not offer money to ER on June 8. He admitted, however, that this testimony was inconsistent with testimony in the criminal action.

Dr. Santa Mina testified that he offered to watch television with ER inside the clinic because ER had been standing outside the clinic for quite awhile and seemed nervous. Dr. Santa Mina said he wanted to make ER feel comfortable, as he would with any patient.

Dr. Santa Mina testified that he had no idea that ER had accused him of oral copulation.

22. There was no reason for Dr. Santa Mina to repeatedly invite ER inside the clinic in the face of ER’s constant refusal and ER’s assertion that he was nervous. Dr. Santa Mina’s claim that he wanted ER to enter the clinic to view the MRI images was a ploy to lure ER inside so he could be with ER out of public view for his own personal reasons.

Dr. Santa Mina’s claim that he did not hear ER accuse him of oral copulation was simply untrue. Dr. Santa Mina heard and understood that assertion, and he responded to it.

Dr. Santa Mina’s claim that ER brought a typewritten letter of apology with him to the June 8, 2007, encounter, that ER read the letter out of Dr. Santa Mina’s presence, that ER incorporated into the reading of that letter the nursery rhyme that Dr. Santa Mina claimed he

had written on the back of a requisition form, and that Dr. Santa Mina lacked the skill to compose such a letter in Spanish was not believable.

Dr. Santa Mina's comments during the June 8, 2007, recording constituted admissions against interest and corroborated ER's account of the June 1, 2007, encounter.

The Standard of Care – Ordinary Negligence – Gross Negligence – Expert Testimony

23. Physicians must exercise that degree of skill, knowledge, and care ordinarily possessed and exercised by members of the medical profession under similar circumstances. The standard of care is a matter peculiarly within the knowledge of experts; it presents a basic issue and can be proven only by expert testimony, unless the conduct required by the particular circumstances is within the common knowledge of the layman. (*Williamson v. Prida* (1999) 75 Cal.App.4th 1417, 1424.)

Ordinary (or simple) negligence is an unintentional tort, and it consists of the failure to exercise the degree of care in a given situation that a reasonable person would employ to protect others from harm under similar circumstances. Gross negligence, on the other hand, long has been defined in California and other jurisdictions as either a "want of even scant care" or "an extreme departure from the ordinary standard of conduct." (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753-754.)

Complainant's Expert

24. Complainant called Farr Ajir, M.D., as an expert witness.

Qualifications: Dr. Ajir received a medical degree and completed a rotating internship at Tehran University School of Medicine, Tehran, Iran, in 1974. He completed a one-year straight internship in general surgery at Maimonides Medical Center, State University of New York, Brooklyn, New York, in 1977. He completed a five-year residency in neurological surgery at the University of Wisconsin School of Medicine in Madison Wisconsin, in 1982. Dr. Ajir became board certified by the American Board of Neurological Surgery in 1984.

Dr. Ajir practiced neurosurgery in Wisconsin in 1982 and 1983. He then moved to California. He became licensed to practice in California, after which he began practicing as a neurosurgeon with Kaiser Permanente in Southern California. He remained with Kaiser through 2008. He left Kaiser in 2008 and established a private practice in Westlake Village, California.

Dr. Ajir held numerous leadership positions with Kaiser. He is a member of many professional organizations.

Materials Reviewed: Dr. Ajir reviewed the Medical Board investigative report, the Brawley Police Department police reports, a copy of the felony complaint, the transcript of the recorded conversation between Dr. Santa Mina and patient ER, copies of various medical records, a copy of the preliminary hearing transcripts, copies of documents related to ER's civil action filed against Dr. Santa Mina, and other materials.

Narrative Report: Dr. Ajir prepared a six-page narrative report that included a list of the materials he reviewed, background information, a summary of the case, the medical issues presented, and his analyses and conclusions.

Relevant Standards of Care: Dr. Ajir's credible testimony established one primary standard of care that applied in this matter. That standard was best expressed in Dr. Ajir's report as follows:

The standard of medical practice in California is to preserve boundaries of the physician-patient relationship. Any sexual contact or relationship between the physician and an active patient is improper and unethical.

The standard of care is to touch the genitalia of a patient only for good medical reason, and also after obtaining permission from the patient to proceed with such examination.

Dr. Ajir's Analysis and Conclusion: Dr. Ajir assumed that patient ER told the truth and that while ER was lying on the exam table for electrodiagnostic testing, he felt and observed Dr. Santa Mina sucking on his penis. Dr. Ajir concluded that there was no reason for Dr. Santa Mina to examine ER's genitals during electrodiagnostic testing and that Dr. Santa Mina's conduct involved an extreme departure from the standard of care.

25. On cross-examination, Dr. Ajir acknowledged that he was a neurosurgeon, that he was not trained as a neurologist, and that he was not an expert in that medical specialty even though he was somewhat familiar with it.

Dr. Ajir testified that it would be proper to clean a patient's genitals before electrodiagnostic testing if the genitals were going to be tested, but he could find no reason to clean the genitals if testing was not going to be performed there. Dr. Ajir believed that swabbing in the inner thigh might cause an erection, but Dr. Ajir had never heard of a patient ejaculating as a result of swabbing of the inner thigh. He believed that would be "extremely unusual."

Dr. Ajir conceded that if ER's statements concerning his June 1, 2007, encounter with Dr. Santa Mina were untrue, there was no departure from the standard of care.

Respondent's Expert

26. Respondent called Tahseen Mozaffar, M.D., as an expert witness.

Qualifications: Dr. Mozaffar received a bachelor's degree in medicine and surgery from the Aga Khan University, Karachi, Pakistan, in 1989. He completed a rotating internship at the Aga Khan University in 1990. He completed a one year internship in medicine at St. Luke's Hospital in Chesterfield, Missouri, in 1992. He completed a three-year residency in neurology at the Barnes Hospital in St. Louis, Missouri, after which he was a research assistant to Professor C.D. Marsen at the Institute of Neurology in London, England. From 1985 through 1987, he served as a clinical research fellow in neuromuscular disorders at Washington University in St. Louis, Missouri. In 2006, Dr. Mozaffar became an Associate Professor of Clinical Neurology at the University of California, Irvine, School of Medicine. Dr. Mozaffar became a Fellow of the American Academy of Neurology in 2007.

Dr. Mozaffar is a member of many professional organizations and has served on many professional committees.

Materials Reviewed: Dr. Mozaffar reviewed Dr. Ajir's narrative report.

Opinions: Dr. Mozaffar testified that the nature of the testing Dr. Santa Mina provided in response to ER's presentation was within the standard of care. Dr. Mozaffar believed that neurological problems involving a patient's low back could have an impact on a patient's sexual functioning and that it would be appropriate for a neurologist to ask a patient about his or her sexual history and to test the patient's genitals and sphincter when indicated. Dr. Mozaffar testified that it was appropriate to clean the lower extremities with isopropyl alcohol before conducting electrodiagnostic testing and that a neurologist would come within one to three inches of the patient's testicles and penis in doing so. He thought it possible for a patient to become sexually aroused when swabbed with alcohol on the inner thigh, and even a patient with erectile dysfunction could achieve "some degree of erection." Dr. Mozaffar testified that a penis can emit secretions that would cause wetness without the patient having an ejaculation. Dr. Mozaffar testified that it was not routine to touch a patient's testicles or penis in performing routine electrodiagnostic testing.

Dr. Mozaffar believed that the standard of practice required that all significant events occurring during electrodiagnostic testing be charted.

27. On cross-examination, Dr. Mozaffar testified that his opinions and conclusions in this matter were limited to determining if Dr. Santa Mina's testing was indicated and within the standard of care. Dr. Mozaffar testified that it would not be appropriate to swab the penis or testicles if they were not going to be tested. Dr. Mozaffar testified that he had conducted electrodiagnostic testing of more than 8,000 patients and that he had never seen a patient achieve an erection or ejaculate during such testing. He said he had swabbed a majority of those patients with isopropyl alcohol before testing.

Relevant Standard of Care

28. Credible expert testimony established that the standard of medical practice in California requires the preservation of the boundaries of the physician-patient relationship. Any sexual contact or relationship between the physician and an active patient is improper, unethical, and involves an extreme departure from the standard of care.

Dr. Santa Mina's Evidence

29. Dr. Santa Mina called Diana Del Campo and Victoria Escalante. Their testimony was offered to impeach portions of ER's testimony and to establish that ER did not appear to be distressed when he left the clinic on June 1, 2007.

The testimony of these two witnesses did not establish that patient ER was not a credible witness or that Dr. Santa Mina did not engage in sexual misconduct with ER when Dr. Santa Mina and ER were alone in the electrodiagnostic exam room on June 1, 2007.

30. Dr. Santa Mina flatly denied touching patient ER's penis or testicles on June 1, 2007, and he denied engaging in any act of oral copulation upon ER.

Dr. Santa Mina raised the issue of patient ER having provided a history of erectile dysfunction on May 31, 2007, and then lying about that condition at the disciplinary hearing. Dr. Santa Mina denied asking ER about ER's sexual history, and there was no sexual history in the patient chart to support his having asked about that. It was argued that these matters established that ER was a liar and that none of his testimony should be trusted.

Dr. Santa Mina established that his initial neurological examination was thorough, that an electrodiagnostic examination was indicated, and that his clinical assessment of ER's low back problems was correct. But, these matters had nothing to do with Dr. Santa Mina's credibility or ER's credibility.

To explain why ER fabricated the sexual misconduct allegations, Dr. Santa Mina testified that ER twice became sexually aroused and ejaculated when his inner thigh was swabbed. Through counsel, he suggested that ER's embarrassment and shame following his arousal and ejaculation was the reason ER made up a story about Dr. Santa Mina's oral copulation, that he lied to his wife about it to cover his shame, and that he lied to his neighbor and the police so no one would know the truth.

Dr. Santa Mina's attempt to explain ER's conduct on this basis made no sense at all. If ER had ejaculated during the procedure, and if he were as embarrassed as Dr. Santa Mina suggested, it would be highly unlikely that ER would tell anyone of that experience, including his wife. The contention that his testimony was contrived to support a civil action that he later filed against Dr. Santa Mina was equally unbelievable.

The recorded conversation of June 8, 2007 provided a real problem for Dr. Santa Mina in attempting to establish that ER's account was false. Even when that recorded conversation is viewed with caution - because it was the product of a ruse, because it was not under oath, and because portions of it were garbled and often unintelligible so that context was not always apparent - the statements that Dr. Santa Mina made and did not make during that conversation, taken as a whole, were inconsistent with anything other than Dr. Santa Mina having engaged in sexual misconduct.

ER made it clear throughout the 20 minute conversation that something unpleasant had happened the previous Friday that made ER so nervous that he refused to enter the clinic. Despite ER's refusal to enter, Dr. Santa Mina inexplicably persisted in trying to entice ER to come inside. On at least two occasions, ER specifically accused Dr. Santa Mina of sucking his penis. Dr. Santa Mina did not say, in response to ER's more general statements, that he understood that ER was nervous because ER had ejaculated, nor did he say in response to ER's more specific allegation that he had not sucked ER's penis. Instead, and in response to the specific accusations, Dr. Santa Mina said on one occasion, "No, I know, but. . ." and on the other occasion, "Did you tell your wife?"

To explain these direct admissions, Dr. Santa Mina claimed that he did not hear ER allege that Dr. Santa Mina had sucked ER's penis. These statements were clearly made in the recorded conversation. To explain why he wanted ER to enter the clinic, Dr. Santa Mina claimed that he wanted ER to look at the MRI studies so ER would be better informed and because ER was nervous. Dr. Santa Mina's asking ER to go inside the clinic to relax when ER said he was nervous about going inside the clinic made no sense at all. Dr. Santa Mina's testimony in this regard was both convenient and false.

To explain the letter of apology that ER read aloud, Dr. Santa Mina claimed that ER brought the letter with him, that ER read the letter out of Dr. Santa Mina's presence, and that ER had the presence of mind when reading that letter to include the content of a Filipino nursery rhyme that Dr. Santa Mina had shown to him just moments before. These explanations were necessary to Dr. Santa Mina's defense because the letter that ER read contained a direct apology "for what happened last week," stated that Dr. Santa Mina "still can't understand what I did," and admitted that Dr. Santa Mina "lost control."

Dr. Santa Mina also claimed that if there had been a written letter of apology, ER would have maintained physical possession of it. But after ER's reading of the letter into the recording device, ER did not need to retain it.

Since the letter was unsigned, Dr. Santa Mina could always claim that he had not drafted the letter and that ER brought it with him to their meeting. There was no reason, under the circumstances, for ER to battle Dr. Santa Mina over custody of the letter. Doing so would have resulted in the abrupt termination of their conversation, which was still being recorded.

Dr. Santa Mina claimed that the letter ER read was grammatically correct and that he was incapable of drafting such a letter. First, the letter was not produced, so its grammatical correctness could not be established. Second, Dr. Santa Mina's purported lack of ability to draft such a letter was supported primarily by his own self-serving testimony.

Dr. Santa Mina's explanations related to the letter of apology were false.

Finally, Dr. Santa Mina offered ER money. The context in which Dr. Santa Mina offered the money to ER established that it was intended to obtain ER's silence. That was the reason Dr. Santa Mina testified at the disciplinary hearing that he did not offer ER money; he was aware that the offer of money showed his consciousness of guilt.

Other Matters

31. No evidence was offered regarding mitigation or rehabilitation.

Disciplinary Guidelines

32. The Board publishes a Manual of Model Disciplinary Orders and Disciplinary Guidelines (10th Edition). The guidelines are not binding. The Board adopted the guidelines to promote uniformity, certainty, fairness, deterrence, and public protection.

For sexual misconduct, the guidelines set forth a minimum penalty of stayed revocation, with seven years probation, and a maximum penalty of outright revocation.

Disciplinary Arguments

33. Complainant argued that Dr. Santa Mina took advantage of his position of trust and sexually assaulted patient ER. Complainant argued that ER reported the matter to law enforcement and participated in a sting in which Dr. Santa Mina essentially corroborated ER's account of the June 1 encounter. Complainant argued that Dr. Santa Mina created a cover story – ER's erection and ejaculation during an electrodiagnostic procedure – to discredit the evidence against him. Complainant argued that ER was a credible witness and that portions of his testimony were corroborated by his wife and, more importantly, the recorded conversation. Respondent offered no evidence of rehabilitation. Complainant asserted that an outright revocation of Dr. Santa Mina's certificate was the only disciplinary outcome that would protect the public.

34. Respondent's counsel argued that ER was not a credible witness because he lied about his erectile dysfunction and other matters. It was argued that Dr. Santa Mina never cleaned ER's penis and testicles with isopropyl alcohol, and that Dr. Santa Mina would never orally copulate ER if he had cleaned ER's penis and testicles with isopropyl alcohol because that is a poisonous substance. It was argued that it would be virtually impossible for Dr. Santa Mina to put a limp penis in his mouth, claiming that "It would be like bobbing for

apples with no hands.” Counsel argued that the expert’s evidence supported Dr. Santa Mina’s testimony that ER attained an erection and had an emission, and the failure to place a note in the chart to document the erections and ejaculation was understandable because was so unusual. Much of the factual argument centered on the interpretation that should be given to the June 1, 2007, recorded conversation between ER and Dr. Santa Mina. Dr. Santa Mina asserted that, if the conversation were properly understood, it was evident that he made no admissions and merely expressed concern for his patient. Counsel argued that the evidence was neither clear nor convincing on the issue of Dr. Santa Mina having engaged in sexual misconduct with ER.

Evaluation

35. A physician must act in a professional manner when interacting with patients. Sexual abuse, sexual misconduct, and having sexual relations with a patient involve boundary violations and unprofessional conduct.

Clear and convincing evidence established that Dr. Santa Mina orally copulated patient ER during the course of electrodiagnostic testing occurring on June 1, 2007. It was a nonconsensual act. Dr. Santa Mina’s testimony concerning what happened during the June 1, 2007, encounter, the reason he called ER’s home several times after that encounter, and what was and was not said during the June 8, 2007, conversation was not believable; rather, it was the product of Dr. Santa Mina’s duplicitous efforts to avoid the consequences of his sexual misconduct. No evidence was offered in mitigation. No evidence was offered in rehabilitation.

The purpose of this proceeding is not to punish Dr. Santa Mina but to protect the public. Action calculated to aid in Dr. Santa Mina’s rehabilitation must be considered; but, where rehabilitation and protection are inconsistent, protection is paramount. Rehabilitation is a state of mind. Dr. Santa Mina’s inability or refusal to acknowledge his wrongdoing and his willingness to lie under oath make it difficult to feel confident that he will conform his conduct to required professional standards in the future. Revocation of his certificate is the only discipline that will protect the public.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of an administrative proceeding seeking the revocation or suspension of a license is not to punish; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856, 185; *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Rehabilitation and Protection of the Public

2. Business and Professions Code section 2229 provides in part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

(c) It is the intent of the Legislature that . . . the enforcement program . . . seek out those licensees who have demonstrated deficiencies in competency and then take those actions as are indicated, with priority given to those measures, including further education, restrictions from practice, or other means, that will remove those deficiencies. Where rehabilitation and protection are inconsistent, protection shall be paramount.

The Standard of Proof

3. The standard of proof in an administrative disciplinary action seeking the revocation or suspension of a physician's and surgeon's certificate is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a high probability. The evidence must be so clear as to leave no substantial doubt and to command the unhesitating assent of every reasonable mind. (*Mathieu v. Norrell Corp.* (2004) 115 Cal.App.4th 1174, 1190.)

The Standard of Care – the Requirement of Expert Testimony - Ordinary Negligence – Gross Negligence

4. The legal authority related to the standard of care incumbent upon a physician, the definition of ordinary negligence, the definition of gross negligence, and the requirement that expert testimony support a departure from the standard of care are set forth in Factual Finding 28.

Applicable Disciplinary Statutes

5. Business and Professions Code section 726 provides in part:

The commission of any act of sexual abuse, misconduct, or relations with a patient . . . constitutes unprofessional conduct and grounds for disciplinary action. . . .

6. Business and Professions Code section 2234 provides:

The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

...

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. . . .

General Unprofessional Conduct

7. The term unprofessional conduct covers a number of specific acts described in the Medical Practice Act, but nowhere is it stated that unprofessional conduct is limited to those acts. The term “unprofessional conduct” must relate to conduct that indicates an unfitness to practice medicine. Unprofessional conduct is that conduct that breaches the rules or ethical code of a profession or conduct unbecoming a member in good standing of a profession. (*Thorburn v. Department of Corrections* (1998) 66 Cal.App.4th 1284, 1289; *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

Physician-Patient Sexual Misconduct

8. There is an inherent trust and confidence when a patient seeks medical care from a professional. The fact that a patient visits a professional’s office for legitimate purposes, understands that the patient’s body will be touched and moved in various ways, and signs consent forms that explain that treatment might be uncomfortable, unsettling, or anxiety-producing is no defense to a charge of sexual battery by fraud where these techniques are used as a smokescreen to obscure the professional’s true intentions. (*People v. Pham* (2009) 180 Cal.App.4th 919, 926-927.)

9. In sexual exploitation cases, the trier of fact looks to all of the circumstances to determine whether the alleged conduct was performed with the required specific intent. Relevant factors can include a party's extrajudicial statements, other acts of lewd conduct admitted or charged in the case, the relationship of the parties, and any coercion, bribery, or deceit used to obtain the victim's cooperation or avoid detection. (*People v. Martinez* (1995) 11 Cal.4th 434, 445.)

Rehabilitation

10. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent's attitude toward the offense and his character as evidenced by his behavior and demeanor at trial may be considered in determining what discipline to impose. (*Yellen v. Board of Medical Quality Assurance* (1985) 174 Cal.App.3d 1040, 1059; *Landau v. Superior Court* (1998) 81 Cal.App.4th 191, 221.)

Cause to Revoke Dr. Santa Mina's Certificate

11. Clear and convincing evidence did not establish cause to impose disciplinary action against Dr. Santa Mina's certificate under Business and Professions Code section 2234, subdivision (c). There was one continuing act of gross negligence. Repeated negligent acts were not established.


12. Clear and convincing evidence established cause to impose disciplinary action against Dr. Santa Mina's certificate under Business and Professions Code section 726. On June 1, 2007, Dr. Santa Mina sexually abused and engaged in sexual misconduct with patient ER by cleaning ER's penis and testicles with isopropyl alcohol and then fellating ER.

13. Clear and convincing evidence established cause to impose disciplinary action against Dr. Santa Mina's certificate under Business and Professions Code section 2234, subdivision (b). On June 1, 2007, Dr. Santa Mina cleaned patient ER's penis and testicles with isopropyl alcohol when there was no medical indication for that conduct. In addition, Dr. Santa Mina orally copulated patient ER, which involved an extreme departure from the standard of care.

ORDER

Physician's and Surgeon's Certificate No. A67778 to Jojo Borromeo Santa Mina, M.D., is hereby revoked on the basis of Legal Conclusions 12 and 13, individually and collectively.

DATED: February 8, 2011



JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

EDMUND G. BROWN JR.
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
MICHAEL S. COCHRANE
Deputy Attorney General
State Bar No. 185730
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2074
Facsimile: (619) 645-2061

Attorneys for Complainant

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 10-2007-184576

JOJO BORROMEIO SANTA MINA, M.D.
AKA, REYNALDO BORROMEIO SANTA MINA
1195 Roadrunner Way
Simi Valley, CA 93065

ACCUSATION

Physician's and Surgeon's Certificate
No. A67778,

Respondent.

Complainant alleges:

PARTIES

1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.

2. On or about March 12, 1999, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A67778 to JoJo Borromeo Santa Mina, M.D., AKA, Reynaldo Borromeo Santa Mina, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

3. This Accusation is brought before the Board under the authority of the

4. All section references are to the Business and Professions Code (Code) unless

5. created.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law
f the Medical Quality Hearing Panel as designated in Section 11371 of the
ment Code, or whose default has been entered, and who is found guilty, or
s entered into a stipulation for disciplinary action with the division, may,
rdance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the division.

“(2) Have his or her right to practice suspended for a period not to exceed _____
 _____ upon order of the division.

"(3) Be placed on probation and be required to pay the costs of probation
upon order of the division.

“(4) Be publicly reprimanded by the division.

“(5) Have any other action taken in relation to discipline as part of an
of probation, as the division or an administrative law judge may deem

“(b) Any matter heard pursuant to subdivision (a), except for warning medical review or advisory conferences, professional competency evaluations, continuing education activities, and cost reimbursement associated with that are agreed to with the division and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is public, and shall be made available to the public by the board pursuant to 803.1.”

///

1 5. Section 2234 of the Code states:

2 “The Division of Medical Quality¹ shall take action against any licensee
3 who is charged with unprofessional conduct. In addition to other provisions of
4 this article, unprofessional conduct includes, but is not limited to, the following:

5 “...

6 “(b) Gross negligence.

7 “(c) Repeated negligent acts. To be repeated, there must be two or more
8 negligent acts or omissions. An initial negligent act or omission followed by a
9 separate and distinct departure from the applicable standard of care shall
10 constitute repeated negligent acts.

11 “(1) An initial negligent diagnosis followed by an act or omission
12 medically appropriate for that negligent diagnosis of the patient shall constitute a
13 single negligent act.

14 “(2) When the standard of care requires a change in the diagnosis, act, or
15 omission that constitutes the negligent act described in paragraph (1), including,
16 but not limited to, a reevaluation of the diagnosis or a change in treatment, and the
17 licensee's conduct departs from the applicable standard of care, each departure
18 constitutes a separate and distinct breach of the standard of care.

19 “(e) The commission of any act involving dishonesty or corruption which
20 is substantially related to the qualifications, functions, or duties of a physician and
21 surgeon.

22 “...”

23 ///

24 ///

25 _____
26 ¹ California Business and Professions Code section 2002, as amended and effective January 1,
27 2008, provides that, unless otherwise expressly provided, the term “board” as used in the State Medical
28 Practice Act (Bus. & Prof. Code, §§ 2000, et seq.) means the “Medical Board of California,” and
references to the “Division of Medical Quality” and “Division of Licensing” in the Act or any other
provision of law shall be deemed to refer to the Board.

1 6. Section 2261 of the Code states:

2 “Knowingly making or signing any certificate or other document directly
3 or indirectly related to the practice of medicine or podiatry which falsely
4 represents the existence or nonexistence of a state of facts, constitutes
5 unprofessional conduct.”

6 7. Section 2262 of the Code states:

7 “Altering or modifying the medical record of any person, with fraudulent
8 intent, or creating any false medical record, with fraudulent intent, constitutes
9 unprofessional conduct.

10 “In addition to any other disciplinary action, the Division of Medical
11 Quality or the California Board of Podiatric Medicine may impose a civil penalty
12 of five hundred dollars (\$500) for a violation of this section.”

13 8. Section 2266 of the Code states:

14 “The failure of a physician and surgeon to maintain adequate and accurate
15 records relating to the provision of services to their patients constitutes
16 unprofessional conduct.”

17 9. Section 726 of the Code states:

18 “The commission of any act of sexual abuse, misconduct, or relations with
19 a patient, client, or customer constitutes unprofessional conduct and grounds for
20 disciplinary action for any person licensed under this division, under any initiative
21 act referred to in this division and under Chapter 17 (commencing with Section
22 9000) of Division 3.

23 “This section shall not apply to sexual contact between a physician and
24 surgeon and his or her spouse or person in an equivalent domestic relationship
25 when that physician and surgeon provides medical treatment, other than
26 psychotherapeutic treatment, to his or her spouse or person in an equivalent
27 domestic relationship.”

28 ///

1 10. Unprofessional conduct under Business and Professions Code section 2234
2 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is
3 unbecoming to a member in good standing of the medical profession, and which demonstrates an
4 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
5 575.)

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Sexual Abuse, Misconduct, or Relations with a Patient)**

8 11. Respondent is subject to disciplinary action under section 726 of the Code,
9 in that he has committed an act or acts of sexual abuse, misconduct, or relations with a patient,
10 client, or customer, as more particularly alleged hereinafter:

11 (a) On or about May 31, 2007 at approximately 11 a.m., patient E.R., then 32
12 years old, presented to respondent's office in Brawley, California, with a chief complaint
13 of back pain. The nurse led patient E.R. to an examination room, where she took his
14 vitals. The nurse told patient E.R. to take off his clothes except for his underpants, and to
15 put on a paper robe, and then left the patient alone in the room. Respondent then entered
16 the room and performed an examination with no one else present in the room. During this
17 examination, respondent ran a pinwheel over patient E.R.'s body, including his legs and
18 back. Respondent then removed patient E.R.'s boxer shorts and began running the
19 pinwheel around and over his testicles and penis. Respondent asked patient E.R. why he
20 was not getting an erection, and patient E.R. responded that he had no reason to get an
21 erection. Respondent also asked patient E.R. during this examination if he had sex with
22 his wife, and the patient replied that he did. Respondent further asked patient E.R. during
23 this examination if he had ever had sex with prostitutes in bars in Mexicali, and patient
24 E.R. replied that he had not. Respondent ordered an MRI to be performed on June 7,
25 2006, by a third party, and scheduled a follow-up appointment for June 12, 2007, at 11:00
26 a.m. to review the MRI.

27 ///

28 ///

1 (b) On or about June 1, 2007, respondent called patient E.R. and told him that
2 his June 12, 2007, appointment was rescheduled to 5:00 p.m. that day. Patient E.R. drove
3 to respondent's office and arrived at approximately 5:00 p.m. The office door was locked,
4 and respondent answered the patient's knock on the door. Patient E.R. and respondent
5 were alone in the office during the June 1, 2007, visit. Respondent directed patient E.R. to
6 an examination room and told the patient to remove all of his clothing and lie on the
7 examination table. Patient E.R. removed his clothing, except for his boxer shorts, and
8 respondent told him to remove his boxer shorts and lie on the table, and patient E.R.
9 complied. Respondent never offered or provided a gown to patient E.R. during this visit.

10 (c) During the June 1, 2007 examination, respondent again used the pinwheel
11 on patient E.R.'s legs, back, testicles, and penis. Respondent then used a device that
12 applied an electric shock, starting at patient E.R.'s right knee and working up the leg
13 toward the groin. Patient E.R. started to feel nervous as respondent got closer to his groin
14 in apprehension that his genitals might be shocked. Respondent thoroughly cleaned
15 patient E.R.'s body from the waist down, including the patient's legs and entire penis with
16 alcohol, pulling down the patient's foreskin in the process of cleaning the penis. As
17 respondent cleaned the patient E.R.'s penis, he asked why the patient was not getting an
18 erection. Respondent then used a "needle device" that was connected to a computer and
19 poked patient E.R.'s legs repeatedly, causing a "jabbing" sensation. Respondent then
20 again cleaned patient E.R. with alcohol.

21 (g) Respondent then told patient E.R. to relax and close his eyes. Patient E.R.
22 was trying to relax and closed his eyes while he lay flat on the table, and he then felt a
23 "pulling sensation" on his penis. Patient E.R. opened his eyes, and saw respondent
24 performing oral copulation on his penis. Patient E.R. pulled away and asked respondent
25 what he was doing. Patient E.R. then dressed himself and attempted to leave the
26 examination room, but respondent stood in front of him and told him to stay. Respondent
27 told patient E.R. that he liked him and wanted to be a good friend. Respondent offered
28 patient E.R. a job working at respondent's house.

1 (h) Respondent asked patient E.R. to follow respondent to his house, and
2 patient E.R. agreed so that he could get out of respondent's office. Patient E.R. followed
3 respondent's car until they arrived at the intersection of Highway 86 and Barioni Avenue,
4 at which time patient E.R. drove eastbound on Barioni Avenue and respondent continued
5 on Highway 86.

6 (i) Respondent called patient E.R.'s home and spoke to his wife, S.R., and
7 instructed S.R. to have patient E.R. call him. S.R. described respondent as sounding
8 impatient and desperate. Respondent called patient E.R.'s home that night a second time,
9 and S.R. gave the phone to their 10-year-old son, who spoke to respondent in English.
10 Respondent called patient E.R. home a third time after patient E.R. arrived home, and S.R.
11 told respondent that her husband was not home.

12 (j) On or about June 6, 2007, patient E.R. reported the incidents at
13 respondent's office to the Brawley Police Department (BPD). On or about June 7, 2007,
14 patient E.R. had the MRI of his lumbar spine performed at El Centro Hospital, and then
15 met with Detective F.S. at the BPD. At approximately 5:00 p.m. on June 7, 2007, Patient
16 E.R. participated in a pre-text phone call to respondent's office with Detective F.S.
17 present. During this call, patient E.R. told respondent that he had the MRI results, and
18 respondent told patient E.R. to bring the MRI results to his office.

19 (k) Detective F.S. and patient E.R. arrived at respondent's office at
20 approximately 5:00 p.m. on June 7, 2007, and the police detective gave patient E.R. a tape
21 recorder to record his encounter with respondent. Patient E.R. went inside respondent's
22 medical office for approximately 5 minutes, and then met Detective F.S. outside the
23 office. Patient E.R. failed to turn on the tape recorder, but reported that respondent
24 kneeled on the ground and asked him to come inside the office, told patient E.R. that he
25 wanted to be a good friend, offered patient E.R. money, and said he wanted to take care of
26 patient E.R. and his family. Patient E.R. also stated that he made another appointment for
27 5:00 p.m. the next day, June 8, 2007.

28 ///

1 (1) On or about June 8, 2007, at approximately 5:00 p.m., patient E.R.
2 presented to respondent's office with Detective F.S. observing outside of the office.
3 Patient E.R. was again given a tape recorder to record the encounter, and this time patient
4 E.R. turned on the recorder. During this conversation, patient E.R. repeatedly accused
5 respondent of performing oral sex on him, and respondent offered to give patient E.R.
6 money. Patient E.R. also read a letter of apology given to him by respondent
7 during this recorded conversation.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Gross Negligence)**

10 12. Respondent is further subject to disciplinary action under sections 2227
11 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he has committed gross
12 negligence in his care and treatment of patient E.R., as more particularly alleged hereinafter:

13 (a) Paragraph 11, above, is hereby incorporated by reference as if fully set
14 forth herein.

15 (b) Respondent committed gross negligence in his care and treatment of
16 patient E.R., which included, but is not limited to, the following:

17 (1) Respondent engaged in contact with the patient's genitalia without a
18 medical reason;

19 (2) Respondent examined the patient's genitalia without a medical reason; and

20 (3) Respondent engaged in sexual contact with the patient.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Repeated Negligent Acts)**

23 13. Respondent is further subject to disciplinary action under sections 2227
24 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he has committed
25 repeated negligent acts in his care and treatment of patient E.R., as more particularly alleged
26 hereinafter: Paragraphs 11 and 12, above, are hereby incorporated by reference as if fully set
27 forth herein.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Dishonesty or Corruption)**

3 14. Respondent is further subject to disciplinary action under sections 2227
4 and 2234, as defined by section 2234, subdivision (e), of the Code, in that he has engaged in an
5 act or acts involving dishonesty or corruption which is substantially related to the qualifications,
6 functions, or duties of a physician and surgeon, as more particularly alleged hereinafter:

7 (a) Paragraph 11, above, is hereby incorporated by reference as if fully
8 set forth herein.

9 (b) Respondent falsely wrote on the chart note for patient E.R. dated May 31,
10 2007, that patient E.R. complained of erectile dysfunction. Respondent also falsely
11 reiterated that patient E.R. complained of erectile dysfunction in his sworn testimony
12 before the Superior Court, and further falsely testified that patient E.R. had obtained two
13 erections and ejaculated while he lay on the examination table during the May 31, 2007,
14 examination.

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Knowingly Making or Signing a False Document)**

17 15. Respondent is further subject to disciplinary action under sections 2227
18 and 2234, as defined by section 2261, of the Code, in that he knowingly made or signed a
19 certificate or other document directly or indirectly related to the practice of medicine which
20 falsely represented the existence or nonexistence of a state of facts, as more particularly alleged
21 hereinafter:

22 (a) Paragraphs 11 and 14, above, are hereby incorporated by reference as if
23 fully set forth herein.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Fraudulent Medical Record)**

3 16. Respondent is further subject to disciplinary action under sections 2227
4 and 2234, as defined by section 2262, of the Code, in that he altered or modified the medical
5 record, with fraudulent intent, or created a false medical record, as more particularly alleged
6 hereinafter:

7 (a) Paragraphs 11 and 14, above, are hereby incorporated by reference as if
8 fully set forth herein.

9 **SEVENTH CAUSE FOR DISCIPLINE**

10 **(Failure to Maintain Adequate and Accurate Records)**

11 17. Respondent is further subject to disciplinary action under sections 2227
12 and 2234, as defined by section 2266, of the Code, in that he failed to maintain adequate and
13 accurate records relating to his care and treatment of patient E.R., as more particularly alleged
14 hereinafter:

15 (a) Paragraphs 11 and 14, above, are hereby incorporated by reference as if
16 fully set forth herein.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct)**

19 18. Respondent is further subject to disciplinary action under sections 2227
20 and 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code
21 of the medical profession, or conduct which is unbecoming to a member in good standing of the
22 medical profession, and which demonstrates an unfitness to practice medicine, as more
23 particularly alleged hereinafter:

24 (a) Paragraphs 11 through 17, above, are hereby incorporated by reference as
25 if fully set forth herein.

26 ///

27 ///

28 ///

PRAYER

WHEREFORE, complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A67778, issued to respondent JoJo Borromeo Santa Mina, M.D.;

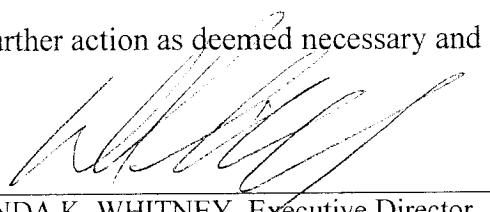
2. Revoking, suspending or denying approval of respondent JoJo Borromeo Santa Mina, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering respondent JoJo Borromeo Santa Mina, M.D., to pay a civil penalty of \$500 for each violation of section 2262 of the Code; and

4. Ordering respondent JoJo Borromeo Santa Mina, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and

5. Taking such other and further action as deemed necessary and proper.

DATED: June 17, 2010


LINDA K. WHITNEY, Executive Director
Medical Board of California
State of California
Complainant